

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 126 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
2 to 5 No

SHAH BHAVNABEN CHANDRAVADAN

Versus

STATE OF GUJARAT

Appearance:

MR RC JANI for Petitioner

Mrs. BR Gajjar, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/03/98

ORAL JUDGEMENT

Heard learned Advocate Shri R.C. Jani appearing for the petitioner.

2. Rule. Learned APP Mrs. B.R.Gajjar waives service of Rule.

3. The petitioner has approached to this court being aggrieved and dissatisfied by the order passed by the learned Additional Sessions Judge, Mehsana on 16.3.1998 below Exhibit 8 in Misc. Criminal Application No, 207/98 moved by the petitioner against the order of rejection of bail dated 21st February, 1988 passed by learned JMFC, Kadi, District Mehsana.

4. A Criminal Case bearing No. 1412 of 1996 was filed against present petitioner for having committed offences made punishable under Sections 307 and 452 of IPC. That during the investigation of the said offences, present petitioner was arrested under Crime Register No. 198 of 1996. That petitioner moved bail application in the High Court of Gujarat being Criminal Misc. Application No. 3606 of 1996 and High Court vide order dated 19th August, 1996, ordered to enlarge the petitioner on bail on executing bond of Rs.. 10,000/and furnishing a surety for the like amount to the satisfaction of the trial court. The High Court also imposed certain conditions, which are usual conditions under the bail orders. One of the conditions was directing the petitioner not to enter the territory of the said Police Station except for the purpose of attending the matter in the competent court. It appears that thereafter when the charge sheet was filed in the court, the petitioner ought to have appeared before learned JMFC, but, petitioner failed to appear on 24.12.1996, 3.1.1997, 16.1.1997, 3.2.1997, 21.2.1997 and 6.3.1997. That thereafter the matter which was required to be committed to Sessions Court, could not be committed and learned JMFC, Kadi, District Mehsana, issued summons against the petitioner. That as petitioner did not appear, bailable warrant was issued and when petitioner failed to appear the non-bailable warrant was issued. It appears that thereafter the petitioner was apprehended and produced before the court. The petitioner moved application through her surety one Jethuji Seduji, requesting the court to enlarge the petitioner on bail and allow to explain her absence in not attending the court on previous dates. That learned JMFC rejected the application and thereby petitioner carried the matter further to the Additional Sessions Judge, Mehsana, vide Criminal Misc. Application No. 207 of 1998. That learned Additional Sessions Judge, Mehsana, heard the Application and disposed of the same vide impugned order dated 16.3.1998, against which, the petitioner has come before this court.

5. Learned Advocate Mr. R.C. Jani, appearing on behalf of the petitioner has submitted that the

petitioner is a divorcee with two minor children and she has to maintain these two children. She as well as her surety had tendered bona fide explanation before the trial court as well as Sessions Court. That on account of misunderstanding of the condition regarding entering into the territory of the competent court as per order passed by the High Court, the petitioner did not remain present on due dates before the Court of learned JMFC. Furthermore, the petitioner was required to produce a solvency certificate for which attempts were made but no certificate could be obtained within due time. That said fact could not be conveyed properly to the court of JMFC and thereby considering the actions of the petitioner as a wilful disobedience, learned JMFC has rejected the bail application. It is earnestly submitted on behalf of the petitioner that learned Additional Sessions Judge has observed that petitioner having committed breach of the conditions of the bail order by not furnishing her changed address, the petitioner cannot be enlarged on bail. That such an order is too harsh particularly when the petitioner is a woman having two minor children to take care of and under the circumstances, this court may exercise the discretion by imposing appropriate conditions on the petitioner.

6. Learned APP Mrs. B.R. Gajjar, urged that the petitioner has intentionally disobeyed the order of the lower court and has committed a breach of conditions of the bail order by not furnishing change of address to the court and, therefore, the petitioner is not entitled to any mercy from this court. The learned APP though made the submission with utmost vehemence, the same could hardly be accepted. In the facts and circumstances of the case, more particularly, when it is stated at the Bar that said Criminal Case has already been committed to the Sessions Court on 18th March, 1998, some stringent conditions should be imposed on the petitioner in order to see that in future no lapse is committed on the part of the petitioner and if committed petitioner could be dealt with seriously.

7. On the above stated discussion, the order passed by the learned Additional Sessions Judge dated 16.3.1998 in the Criminal Misc. Application No. 207 of 1998 is hereby set aside and quashed and it is ordered that the petitioner be enlarged on bail on executing her bond for Rs. 15,000/- (Rupees fifteen thousand only) and furnishing a fresh surety of the like amount to the satisfaction of the trial court. The original conditions imposed in the bail order dated 19.8.1996 passed in the

proceedings of Misc. Criminal Application No. 3606 of 1996 shall continue to be in operation. The petitioner is directed to furnish the bail in the trial court. Rule is made absolute accordingly. No order as to costs.

p.n.nair